

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1575 of 2019

1. Seema Nishad D/o Hariram Nishad Aged About 21 Years, R/o Village - Khairi Tahsil Bhatapara District - Balouda-Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
2. Ku. Mahak D/o Bhupesh Netam Aged About 03 Years, Minor, through natural guardian mother Seema Nishad, R/o Village - Khairi Tahsil Bhatapara District - Balouda-Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicants

Versus

- Bhupesh Netam S/o Ramchand Netam Aged About 30 Years R/o Village Khairi, Tahsil Bhatapara District - Balouda-Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

----Non-applicant

For Applicants – Shri Kishan Lal Sahu, Advocate.

For Non-applicant – Shri Suryakant Mishra, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-04-2021

Heard.

1. This criminal revision has been brought challenging the correctness, propriety and legality of the order dated 06-11-2019 passed in MJC No.155/2019 by the Family Court Balouda Bazar in which the application filed by the applicants for grant of maintenance under Section 125 of the Cr.P.C. was rejected.

2. It is submitted by learned counsel for the applicants that order passed by learned Family Court is erroneous which is liable to be set aside. The applicants were not given any opportunity to establish that applicant No.2 was biological daughter of the respondent. Therefore, in such a case where the respondent is denying the paternity of applicant No.2, there is requirement of DNA test. Application for conducting DNA test has been separately filed along with this application and it is on this basis, prayed that the impugned order be set aside and the case be remanded back to learned Family Court giving

direction to conduct DNA test to determine the paternity of applicant No.2.

3. Learned counsel for the respondent opposes the submission and submits that only for the reason that applicant No.1 wants DNA examination the case cannot be remanded back to the Family Court. Applicant No.1 had opportunity to file such application before the Family Court, which she has not availed. Hence, the revision petition is not maintainable, which may be dismissed.

4. Heard learned counsel for the parties and perused the record.

5. Considered on the submissions. The application of the applicants has been rejected on the basis of this finding that applicant No.1 is not a married wife of the respondent and that the applicants have failed to prove that applicant No.2 is biological daughter of the respondent.

6. On perusal of the record of the Family Court it is found that no application was moved by the applicants before the Family Court praying for DNA examination to determine the paternity of applicant No.2.

The revisional jurisdiction that is exercised under Section 397(1) of the Cr.P.C. has very limited scope to examine correctness, legality and propriety of any order passed, As there is nothing to consider in this case that any such application for DNA examination was filed by the applicants before the Family Court and that was erroneously rejected, therefore, there is no question present in this revision petition on any such decision of learned Family Court. Filing of application for DNA examination for the first time before the revisional Court cannot be entertained under any provision of law. The powers that can be exercised by revisional Court are very limited and provided under Section 401 of the Cr.P.C. which does not give any scope for entertaining any such application and also for giving any such direction to the Court below. Therefore, the prayer made by the applicants' counsel in his submission before this Court

is not sustainable. Otherwise also, on merits this petition appears to be without any substance. Therefore, this criminal revision is dismissed and disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge